

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 6, 1982

MEMORANDUM TO: Members of the President's Cabinet Council
on Commerce and Trade

FROM: Ambassador William E. Brock

SUBJECT: Update on U.S.-Canada Bilateral Investment
Issues

Background

At the November 3 meeting of the Cabinet Council on Commerce and Trade (CCCT), it was decided to continue our intensified efforts to resolve our differences with Canada over its National Energy Program (NEP) and the operation of its Foreign Investment Review Agency (FIRA) through bilateral consultations. It was also decided at that time for me to submit to the Canadian Government a detailed list of specific U.S. concerns regarding the NEP and FIRA in order to facilitate our discussions. Should these senior-level consultations fail to resolve our differences, the CCCT was of the opinion that we should then follow established U.S. procedures for addressing unreasonable and discriminatory foreign trade and investment practices, including raising our concerns in appropriate international fora.

Recent Administration Efforts

Our interagency efforts to reach a bilateral resolution of our problems with Canada have continued in earnest, but, unfortunately, without satisfactory results. The Canadian Government did attempt to address some of our concerns in the presentation of the federal budget on November 12. The budget publicly committed the Canadian Government 1) not to extend NEP policies to other sectors; 2) not to expand, for the time being, FIRA's mandate; and 3) to complete an administrative review of FIRA. However, the announcements were not unexpected and merely confirmed statements previously given informally by some Canadian officials. More importantly, they failed to modify the NEP in any way or to address our concerns over the current operation of FIRA.

Therefore, on December 2, I transmitted to the Canadian Government a letter on behalf of the U.S. Government which detailed our specific concerns over the NEP and FIRA. This letter was intended to clarify for the Canadian Government our key concerns in order to facilitate the bilateral discussions. Unfortunately, the Canadian response failed to indicate any interest by the Canadians in meeting any of our concerns.

Our continued attempts to resolve our problems through bilateral consultations have met a similar fate. Not only have the Canadians failed to indicate any predilection to modify their policies, but a key piece of the NEP implementing legislation was enacted by the Canadian Parliament just before Christmas.

An interagency decision was subsequently reached to shift our discussion of certain of these issues to a multilateral context, specifically within the General Agreement on Tariffs and Trade (GATT). On January 5, a letter was transmitted to the Canadian delegation in Geneva requesting formal consultations under the GATT concerning certain practices associated with the operation of FIRA.

Following a conversation I had with Canadian Foreign Minister Mark MacGuigan, I decided to invite the Canadian Government to participate in the trade discussions which are scheduled later this month in Florida with the European Community and Japan. This meeting will provide a potentially good opportunity to discuss implications for the world trading system of Canadian investment and energy policies.

Next Steps

1. Continue to raise U.S. concerns over the NEP and FIRA in a multilateral context.

Until recently, the only multilateral review of these Canadian policies has been a discussion of the NEP in the Organization for Economic Cooperation and Development (OECD). We should also now initiate discussions within the OECD on the operation of FIRA. Concerning our recently-initiated discussions in the GATT, we should be prepared to utilize the dispute settlement provisions of the GATT if our consultations within that forum should fail to resolve our concerns. I am also prepared to introduce the issue of the Canadian energy and investment policies as embodied in the NEP and the FIRA during my discussions with the EC, Japan and Canada later this month in Florida.

2. Continue senior-level bilateral consultations

Although such consultations up until now have failed to resolve any of our major concerns, continued bilateral discussions should be continued only as long as the Canadian Government indicates a willingness to seriously consider our concerns with a view to resolving our differences. In this regard, I will be meeting with senior Canadian officials at the end of this month in Ottawa in conjunction with a trip I have scheduled to Toronto to deliver a speech.

3. Begin a reassessment of possible U.S. actions in response to the NEP and FIRA

If our bilateral and multilateral efforts should fail to resolve our problems, we should be prepared to take appropriate actions to protect U.S. interests. The Trade Policy Committee (TPC) on October 13 considered a paper which listed various options and specific actions available for use in response to Canadian investment and energy problems associated with the NEP and FIRA. An updated and revised version of that paper will be reviewed by the TPC on January 12.

This paper will recommend that I raise our FIRA and NEP problems at the quadrilateral meeting, emphasizing the multilateral nature of the problem and the damage it does to our efforts in developing a more open international and investment environment. It will also recommend initiation of the objective public discussion of Canadian policies.

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The public discussion option is likely to have the greatest impact on the Canadian Government view as to how serious we view the problems created by FIRA and the NEP. At the same time it would lay the groundwork for any additional actions. This approach would also have little or no negative economic impact on the U.S. economy.

Coincident to the public discussion would be the initiation of an interagency task force under the TPSC to look at all the available actions that could be taken in response to FIRA and the NEP. This group should report back to the TPC with its recommended actions as well as a recommendation on whether a 301 action should be self-initiated. We should also inventory the ongoing trade-related negotiations with Canada. The intent of this would be to decide where we should be as responsive to Canadian concerns as they are to our concerns on the NEP and FIRA.

Finally, now that Bill C-48 has passed and the Energy Security Act has not been revised, it would appear appropriate for us to meet again with representatives of the U.S. oil and gas industry on the impact of the NEP and possible U.S. actions.